

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 836 OF 2016
with
CIVIL APPLICATION NO. 1650 OF 2016***

1. Mr. Pandurang Ramchandra Jagtap
Since deceased through Legal Heirs.

1A. Suryakant Pandurang Jagtap
Age 45 years, Occu. Service
R/at – 407, Rasta Peth,
Pune – 411 011.

1B. Mrs. Meena Sambhaji Temghare
Age – 48 years, Occu. Housewife
R/at – 84/9, Sadgurunagar,
Flat No. 30, Shinde Pool, Shivane
Pune – 411 023.

1C. Smt. Vidya Dilip Varhadi
Age – 47 years, Occu. Service
R/at – Behind Rajgurunagar Civil
Court, Opp. Sitai Apartment,
Rajgurunagar, Tal. - Khed,
Dist. - Pune – 410 505.

1D. Mrs. Surekha Umesh Sable
Age – 43 years, Occu. Service
R/at – 658/7, Shivraynagar,
Upper Kondhwa Road,
Bibwewadi, Pune – 411 037

...Appellants/Applicants.

V/s.

Mr. Kamalakar Ramchandra Jagtap
Age – 70 years, Occu.- Retired
R/at : 1) S. No. 38, Dashrathnagar,
Havaladar Mala, Vioshrantwadi,
Pune – 411 015.
2. 407, Rasta Peth, Pune – 11.

... Respondent.
(Orig. Plaintiff)

Mr. Kamlesh P. Mali for the Appellants/Applicants.
Mr. M.S. Gandhare for the Respondent.

CORAM : N.M. Jamdar, J.

DATE : 23 January, 2018.

Oral Judgment :-

Admit, on the following question of law :-

“ Whether the learned District Judge had assessed the evidence on record as a First Appellate Court before reversing the judgment and decree passed by the learned Civil Judge ? ”

2. By Consent of parties, the Appeal is taken up for hearing forthwith. Filing of paper-book is dispensed with.
3. Heard learned Counsel for the parties.
4. The Respondent – Plaintiff filed Special Civil Suit No. 2251 of 2007 in the Court of Civil Judge, Senior Division, Pune for

partition. The suit property bearing No. CTS 407, Rasta Peth, Pune was previously owned by one Ramchandra, father of the Respondent – Plaintiff and the Appellant – Orig. Defendant. According to the Plaintiff, during the life time of Madhukar and Vijay, brothers of the Plaintiff and Defendants, they sold their share to the Plaintiff by sale deed and relinquishment deed. According to the Plaintiff, he wanted to develop the property and since the Appellant refused, the suit had to be filed for partition. The learned Civil Judge, by judgment and order dated 30 July 2010 dismissed the suit filed by the Respondent – Plaintiff. First Appeal filed in this Court had to be sent to the District Court in view of the change in pecuniary jurisdiction and was numbered as No. 921 of 2012. The learned District Judge, by judgment and order dated 12 January 2016 allowed the Appeal and decreed that the Plaintiff and Defendants have 9/10th and 1/10th shares respectively.

5. The learned Counsel for the Appellants submitted that the Appellants are not questioning the legality and validity of the deeds but contended that the learned District Judge has not looked into the aspect of quantum of shares ,which was one of the foundation of the decision of the Trial Court. The learned Counsel for the Respondent supported the impugned order contending that the learned District Judge has discussed the issue in detail and since he has held that nine co-sharers have transferred their shares , the

Plaintiff has 9/10th share in the property.

6. The learned Civil Judge accepted the position that there are 10 co-sharers. The learned Civil Judge also accepted that the sale deed and release deed were valid. The learned Civil Judge ,however observed that the deeds referred to some different shares and the portions are differing and may not tally to their shares. When the learned District Judge was faced with this finding, it was expected of the learned District Judge ,as a first appellate court to examine the sale deeds and the relinquishment deeds afresh ascertaining whether the shares tallied as contended and that there were no mis-match as observed by the learned Civil Judge. Unless this exercise was done, the learned District Judge could not be straight away concluded that there was 9/10th share. There is no reference to this observation of the Trial Court at all. Even assuming that the learned Civil Judge was in error in observing so, the learned District Judge, as a first appellate court, should have dealt with the issue before reversing this finding. The learned District Judge only referred to there being 10 co-shares and 9 have relinquished. There is no reference to the argument of mis-match of the Appellants. The law is settled that the first appellate court, the final court on facts, has to re-assess the evidence.

7. In the circumstances, the question of law framed will

have to be answered in favour of the Appellants and the matter will have to be remanded to the District Court. It is however clarified that the observations made in this order are only to emphasize the duty of the first appellate court and the consequent need for remand and it is not a reflection on the merits of the rival contentions.

8. Accordingly, the Second Appeal is allowed. The judgment and order passed by the learned District Judge dated 12 January 2016 is set aside. The Appeal filed by the Respondent – Original Plaintiff bearing No. 921 of 2012 is restored to file to be decided on its own merits. It is clarified that since the Appellants have argued the Appeal only on the ground of the aspect of shares, the finding that the sale deed and the relinquishment deed executed in favour of the Respondent – Plaintiff are valid, is confirmed. The parties will appear before the learned District Judge on 26 February 2018. Liberty to the parties to make an application to the learned District Judge for early disposal of the Appeal. No Costs.

(N.M. Jamdar, J.)